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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 658

JEAN ANDRE PARIS, PETITIONER

v.

JOHN L. MURFF, DISTRICT DIRECTOR, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 11–14) is reported at 247 F. 2d 1. The order and opinion of the District Court (J. A. 2a–14a)[1] is reported at 138 F. Supp. 36.

JURISDICTION

The judgment of the Court of Appeals was entered on July 2, 1957 (Pet. App. 15). A petition for rehearing was denied on October 2, 1957 (Pet. App. 16). The petition for a writ of certiorari was filed on De-

[1] "J. A." designates petitioner's joint appendix in the Court of Appeals, which is included in the record now before this Court.

cember 11, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Petitioner is an alien who entered this country in 1950, and in 1951 obtained relief from military service, thus debarring himself from citizenship; he thereafter twice journeyed to France and last entered this country in September 1953. The question is whether petitioner was properly found deportable under Section 241 (a) (1) of the Immigration and Nationality Act of 1952 since at the time of his last entry he was excludable under Section 212 (a) (22) of the Immigration and Nationality Act of 1952 as an alien ineligible to citizenship.

STATEMENT

The petition seeks review of the judgment of the Court of Appeals for the Second Circuit, which affirmed the judgment of the United States District Court for the Southern District of New York denying petitioner's motion for an injunction against the enforcement of a deportation order and granting the Government's motion for summary judgment.

Petitioner, a native of France, arrived in the United States as a quota immigrant for permanent residence on October 24, 1950; on or about March 16, 1951, he registered for the draft with Local Board 13 in the City of New York. Desirous of returning temporarily to France, he executed on April 17, 1951, a Selective Service System Form 130 which is entitled "Application by Alien for Relief from Training and Service in

the Armed Forces." The application contained the following statement:

> I have read the NOTICE given below, and I understand that I will forever lose my right to become a citizen of the United States, and I may also be prohibited from entry into the United States or its territories or possessions as a result of filing this application.

On the next day he was classified in Class IV–C (alien deferred by reason of application for relief) by his local board and issued a re-entry permit by the Immigration and Naturalization Service. He departed the United States in the latter part of April 1951 and returned on April 7, 1952. On August 15, 1953, he again received a re-entry permit, made a trip to France and returned to the United States the latter part of September 1953. The Immigration and Nationality Act of 1952 had gone into effect on December 24, 1952.

On February 23, 1955, petitioner was served with a warrant of arrest charging that he was illegally in the United States, and subject to deportation under Section 241 (a) (1) of the Immigration and Nationality Act of 1952 on the ground that he was, at the time of his last entry (September 1953), an alien "ineligible to citizenship" and thus excludable pursuant to Section 212 (a) (22) of the 1952 Act. After a hearing, the Special Inquiry Officer ordered that, if petitioner should fail to avail himself of the privilege of voluntary departure, he should be deported on the charge set forth in the warrant. On September 28, 1955, the Board of Immigration Appeals

affirmed this decision. A final order was entered on November 7, 1955, directing petitioner to depart from the United States on or before December 9, 1955, and that, if he should fail to do so, to surrender on or before December 12 for deportation (J. A. 3a–4a, 27a–28a).

The District Court denied petitioner's application for an injunction against the deportation order and granted the Government's motion for summary judgment. The Court of Appeals affirmed.

ARGUMENT

Petitioner was found deportable under Section 241 (a) (1) of the Immigration and Nationality Act of 1952 on the ground that when he last entered the United States, in the latter part of September 1953, he "was within one or more of the classes of aliens excludable by the law existing at the time of such entry", since, at the time of that entry, he was excludable under Section 212 (a) (22) of the 1952 Act as an alien ineligible for citizenship and not within the nonimmigrant exception of that section.

Petitioner argues that Section 405 (a)—the general savings clause of the 1952 Act—preserves the status he had under Section 13 (c) of the 1924 Act which allowed the admission of nonquota immigrants even though ineligible for citizenship, and that therefore he was not an excludable alien when he last entered the United States in September 1953. This same issue is raised in *Richmann* v. *Barber*, petition for certiorari filed on November 12, 1957, No. 604, this Term. We respectfully refer the Court to the Gov-

ernment's Brief in Opposition in that case for our answer to the argument presented here.[2]

CONCLUSION

It is respectfully submitted that for the reasons stated in the Government's Brief in Opposition in *Rietmann* v. *Barber, supra,* the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

RUFUS D. MCLEAN,
Acting Assistant Attorney General.

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Attorneys.

JANUARY 1958.

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[2] It should be noted that petitioner did not administratively challenge the order of his local draft board placing him in Class IV-C, and his petition for certiorari does not raise any issue as to the propriety of that classification.

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